REMARKS

Claims 1-52 are pending.

Claims 4, 5, 10, 13, 17, 18, 23, 26, 30, 31, 36, 39, 43, 44, 49 and 52 are allowed.

Claims 1-3, 6-9, 11, 12, 14-16, 19-22, 27-29, 32-35, 37, 38, 40-42, 45-48, 50 and 51 stand rejected.

Claims 2-4, 7, 11, 14-17, 20, 24, 27-30, 33, 37, 40, 46 and 50 are amended, herein. No new matter has been added.

35 USC §112 Rejection of Claims 4, 14, 17, 20, 24, 27, 30, 33 and 37

Claims 4, 14, 17, 20, 24, 30, 33 and 37 stand rejected on the basis of being indefinite for failing to distinctly claim the subject matter of the invention. Claims 4, 14, 17, 20, 24, 30, 33 and 37 are herein amended to explicitly recite a calling device or a called device. Withdrawal of the 35 USC §122 rejection is respectfully requested.

35 USC §103 Rejection of Claims 1-3, 6-9, 14-16, 19-22, 27-29, 32-35, 37, 38, 40-42 and 45-48

Claims 1-3, 6, 14-16, 19, 27-29, 32, 37, 38, 40-42 and 45 as well as previously allowed claims 7-9, 20-22, 33-35, 37, 38 and 46-48 stand rejected under 35 U.S.C. § 103(a) according to the newly cited reference of Liu (U.S. Patent 6,130,879).

The rejection is traversed.

Liu discloses an end to end switching method through a WAN 260 where an achievable rate R is selected from the lesser of two available rates Y, Z at either end of the WAN 260.

Previously presented claim 1 recites, in part, a processor configured to:

> transmit a call setup message to a called device through a network to establish a connection session for exchanging data;
> receive from the called device a reply message;
> analyze the reply message for inclusion of an attribute of the called device associated with the connection session;
> infer from the reply message the attribute that is not included in the reply message; and
> transmit data to the called device using the inferred attribute.

As acknowledged by the Examiner, Liu fails to explicitly disclose receiving a reply message from the called device. Instead the Examiner identifies a reference at column 9, lines 58-60 which describes DSLAM 240 selecting an achievable rate R depending on a comparison of an available rate Y on DSL 225 and an available rate Z (i.e. "the result") on DSL 225'. See column 9, lines 52-57 which describes the result of step 434 in the section referenced by the Examiner, as being rate Z. Specifically, the Examiner appears to suggest that data rate R is an attribute that is inferred from data rate Z, and that one skilled in the art would conclude that the data rate Z is a reply message. Applicant respectfully disagrees with this interpretation of Liu.

The available rates Y, Z of Liu are determined through rate negotiation processes between DSLAM 240, 240' and the DSL 225, 225' associated with endpoints 230, 231 (column 9, lines 48-57). The rate negotiation to determine available rates Y, Z consumes resources and requires two negotiation sessions by the two DSLAM before the data rate R can be determined. This type of back and forth exchange of information prior to setting up a call between endpoints is avoided by the embodiment recited by claim 1 (see Applicant's background section page 1, lines 14-17 and page 2, lines 11-18).

Applicant respectfully disagrees that the available rate Z discloses a reply message as recited by claim1. Liu describes data rate R as being selected according to a comparison of available rates Y, Z. Available rate Z associated with DSL 225' is described as "the result" of step 434 (column 9, lines 52-57), and is determined by the remote DSLAM 240' of the caller CPE 230 during negotiations with DSL 225'. Since rate Z is determined by the remote DSLAM 240' of the caller CPE 230, it is clearly not received from the destination CPE 231, or a called device as recited by claim 1. Available rate Y is determined by the DSLAM 240 of the destination CPE 231 and therefore is also not disclosed as being received from a called device.

Even assuming the rate Z does disclose a reply message, the data rate R of Liu is not inferred from the available rate Z. Since neither of the available rates Y, Z are inferred or received from the destination CPE 231, it logically follows that a selection of one of the rates Y, Z does not disclose inferring an attribute from a reply message received from a called device. Interpreting the act of

"selecting" as disclosing the feature of inferring an attribute in claim 1 ignores the plain meaning of the two words as understood by one skilled in the art. Furthermore, even assuming that the selection of rate Z discloses inferring an attribute, this still does not disclose the feature recited by claim 1. According to Liu, the data rate R would be the same value as the selected rate Z which, if disclosing a reply message, would also be included in the reply message. This is contrary to the feature of claim 1 of inferring from the reply message an attribute that is not included in the reply message.

Claims 14 and 27 have been amended to include some of the same features as claim 1, and are allowable for the same or similar reasons. Dependent claims 2, 3, 15, 16, 28 and 29 have been amended for consistency of claim features with the independent claims, and are believed to be allowable as depending on allowable base claims, in addition to the further novel features recited therein. Withdrawal of the rejection of claims 1-3, 6, 14-16 and 27-29 is respectfully requested.

Amended claim 7 recites, in part, a device comprising a processor configured to:

> receive from the called device a reply message;
> infer from the reply message an attribute of the called device for the connection session that is not included in the reply message; and
> decide that information about the attribute will not be forthcoming after transmitting the call setup message and prior to inferring the attribute.

As previously discussed with reference to claim 1, Liu does not disclose receiving from the called device a reply message, nor of inferring from the reply message an attribute of the called device. Even assuming that available data rate Z (i.e. "the result") is a reply message, then data rate R, being the same as data rate Z, would both be included in the reply message and also be forthcoming prior to any inferring, contrary to the recited language of claim 7. The Examiner states that it would be obvious to one skilled in the art that the attribute (the acceptable or available data rate) will not be forthcoming prior to transmitting the call. However, assuming data rate Z is a reply message, the opposite would be understood from a reading of Liu. If data rate Z is a reply message, than caller CPE 230 would receive, and expect to receive, the data rate information Z, in response to its call request. In order to facilitate bringing this application to

allowance, applicant has further amended claim 7 to recite deciding that information about the attribute will not be forthcoming after transmitting the call setup message and prior to inferring the attribute.

Previously allowed claims 7, 20 and 33 have been amended to recite a called device to further clarify the novel features recited therein and to facilitate placing the application in a condition for allowance. Claims 14, 27, 40 and 46 have been amended to include some of the same features as claim 7, and are allowable for the same or similar reasons. Withdrawal of the rejection of claims 7, 14, 20, 27, 33, 40, 46 and their respective dependent claims is respectfully requested.

35 USC §103 Rejection of Claims 11, 24 and 50

Previously allowed claims 11, 24 and 50 stand rejected under 35 U.S.C. § 103(a) according to the previously cited reference of Lor (U.S. Patent 6,130,879).

The rejection is traversed. Amended claim 11 recites, in part, a device comprising a processor configured to:

> receive a call setup message from a calling device through a network to establish a connection for exchanging data;
> configure a first port of a called device to transmit data through, during the connection;
> configure a second port of the called device to receive data from, during the connection;
> transmit to the calling device a reply message identifying the first port as a port to transmit from, but not identifying the second port; and
> receive data addressed to the second port in response to the reply message, where an identifying number of the second port has a preset relationship with an identifying number of the first port.

Lor discloses a station A that transmits an H.225 call setup message to a well-known port (WKP), or destination port, of a station B (col. 38, lines 30-33). The source port number of station A is included in the TCP header (col. 38, lines 43-45). As Applicant explained in the prior Amendment, the destination port number is also included in the TCP packet header (col. 38, line 40). Therefore, both the source port and the destination port number are included in the TCP header.

The Examiner identifies the source and destination ports (e.g. col. 38, lines 45-47) as disclosing the first and second ports recited by claim 11. However, as discussed above, both of the port numbers are in fact identified in the call request. The source port of Station A and the destination port of Station B are reversed

when Station B responds to the call request, so that all communication can be carried out between the two ports (col. 38, lines 47-50). Claim 11, 24 and 50 have been amended to further clarify that the first and second ports are configured for the called device in order to facilitate placing this application in a condition for allowance. Withdrawal of the rejection of claims 11, 24 and 50 is respectfully requested.

Any statements made by Examiner that are not addressed by Applicant do not necessarily constitute agreement by the Applicant. In some cases Applicant may have amended or argued the allowability of independent claims thereby obviating grounds for rejection of the dependent claims

Conclusion

For the foregoing reasons, the Applicant requests reconsideration and allowance of claims 1-52 of the application as amended. The Examiner is encouraged to telephone the undersigned at (503) 224-2170 if it appears that an interview would be helpful in advancing the case.

Respectfully submitted,
STOLOWITZ FORD COWGER LLP

/Bryan D. Kirkpatrick/

Reg. No. 53,135

STOLOWITZ FORD COWGER LLP
621 SW Morrison Street, Suite 600
Portland, Oregon 97205

Customer No. 73552